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11-17

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/532,798 | 04/25/2005 | Takehiko Kishikawa | 2005_0600A | 5653 |
| 513 | 7590 | 06/29/2006 | EXAMINER | |
| WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021 | | | COURSON, TANIA C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | | 2859 |

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/532,798 | KISHIKAWA, TAKEHIKO | |
| | Examiner Tania C. Courson | Art Unit 2859 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 April 2005 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 25APR05.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

2. The abstract of the disclosure is objected to because of the following: change “main boy frame” to “main body frame” on page 19, in line 7. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eller, Jr. (US 3,751,818) in view of Brouillard (US 947,072).

Eller, Jr. discloses a measuring instrument including the following:

- a) a main body frame (16) that is to be arranged along a face to be measured (12), and a reference arm (20) and a telescoping arm (30) that are brought into contact with the face to be measured (Fig. 2), wherein said reference arm and

said telescoping arm are formed at both ends of the main body frame so as to be perpendicular to the main body frame and oriented in the same direction (Fig. 2), and said telescoping arm has a slide scale 60) movable by telescoping the telescoping arm (Fig. 2);

- b) further comprising a driving mechanism that drives a telescoping operation of the telescoping arm (42);
- c) wherein said driving mechanism converts a rotary movement of a rotating member into a telescoping movement of the telescoping arm (42);
- d) wherein said reference arm is provided with a protrusion (36) on a portion to be in contact with the face to be measured on an outer side of the main body frame (Fig. 2);
- e) wherein said main body frame is provided with a bubble gauge (18) for determining a level of the main body frame (Fig. 2).

Eller, Jr. does not disclose a bubble gauge for determining a level of a telescoping arm, wherein said bubble gauge determines a level of the telescoping arm in a telescoping direction, wherein said bubble gauge can be observed from both upper and under sides of the telescoping arm.

Brouillard teaches a lining instrument that consists of a bubble gauge (16) for determining a level of a telescoping arm (Fig. 2), wherein said bubble gauge determines a level of the telescoping arm in a telescoping direction (Fig. 2), wherein said bubble gauge can be

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observed from both upper and under sides of the telescoping arm (Fig. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the measuring instrument of Eller, Jr., so as to include a bubble gauge, as taught by Brouillard, so as to provide a means for increasing precision in leveling during use of the measuring instrument.

5. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eller, Jr. and Brouillard, as applied to claims 1-2 and 5-9 as stated above.

Eller, Jr. and Brouillard disclose a measuring instrument as stated above in paragraph 4. They do not disclose a bubble gauge determining a level of a telescoping arm in a direction perpendicular to a telescoping direction.

Regarding claims 3-4: Eller, Jr. and Brouillard disclose a bubble gauge (16) for determining a level of a telescoping arm (Fig. 2). Changing the location of the bubble gauge from the location shown by Eller, Jr. and Brouillard to a location on in a direction perpendicular to a telescoping direction, absent any criticality, is only considered to be an obvious modification of Eller, Jr. and Brouillard's measuring instrument that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in shifting the position if the operation of the device would not be thereby modified. *In re Japikse*, 86 USPQ 70 (CCPA 1950). Therefore, one skilled in the art would change the location of the bubble gauge in order to suit the needs of the user of the measuring instrument.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a measuring instrument:

Hannah (US 6,912,794 B2)

Russell (US 6,643,942 B1)

McSorely, Sr. et al. (US 4,607,437)

Bailey (US 4,333,244)

Bernard (US 4,067,117)

Posthauer, Sr. (US 2,743,528)

Matoba (US 1,410,491)

Edmiston (US 1,199,355)

Greene (US 928,600)

Schnell (US 527,815)

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239. The examiner can normally be reached on Monday, Wednesday and Thursday from 10AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
June 23, 2006